

## REVENUE DEPARTMENT[701]

### Notice of Intended Action

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 3, “Voluntary Disclosure Program,” Chapter 6, “Organization, Public Inspection,” Chapter 7, “Practice and Procedure Before the Department of Revenue,” Chapter 8, “Forms and Communications,” Chapter 10, “Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments,” Chapter 38, “Administration,” Chapter 39, “Filing Return and Payment of Tax,” Chapter 40, “Determination of Net Income,” Chapter 41, “Determination of Taxable Income,” Chapter 42, “Adjustments to Computed Tax and Tax Credits,” Chapter 43, “Assessments and Refunds,” Chapter 46, “Withholding,” Chapter 48, “Composite Returns,” Chapter 52, “Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits,” Chapter 53, “Determination of Net Income,” Chapter 58, “Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits,” and Chapter 59, “Determination of Net Income,” Iowa Administrative Code.

These amendments clarify existing rules and provisions related to various Department rules regarding administration, individual income tax, corporation income tax and franchise tax.

Item 1 amends paragraph 3.1(4)“a” to specify that tax must be due in order for a taxpayer to be eligible for the voluntary disclosure program.

Item 2 amends subrule 6.1(2) to reflect recent changes to divisions within the Department.

Item 3 amends rule 701—7.8(17A) to correct a reference to a post office box for the Hearings Section of the Department.

Item 4 amends paragraph 7.17(8)“d” to clarify that the 30-day period to appeal a decision of a presiding officer to the Director of Revenue includes Saturdays, Sundays and legal holidays.

Item 5 amends subrule 8.2(2) to update mailing addresses to be used for sending correspondence to the Department.

Item 6 amends paragraph 8.5(2)“b” to provide that an electronic return originator, which is an authorized IRS e-file provider, is not required to provide a copy of the actual forms filed to the taxpayer and that this information can be provided in an alternative format.

Item 7 amends rule 701—10.72(452A) to remove obsolete language regarding the calculation of interest for assessments and refunds of motor fuel tax for periods prior to July 1, 1997.

Item 8 amends rule 701—38.10(422) to remove a reference to the inflation adjustment related to the civil service annuity exclusion for individual income tax since this exclusion was stricken by the Legislature in 1989.

Item 9 amends rule 701—38.15(422) to reference updated changes made to the innocent spouse provisions by the Internal Revenue Service for individual income tax, which Iowa adopts in accordance with Iowa Code section 422.21, subsection 7.

Item 10 amends subrule 38.17(3) to provide that the provisions of the Servicemembers Civil Relief Act, Public Law 108-189, for individual income tax only applies to nonresidents of Iowa who are in an active duty status under Title 10 of the United States Code.

Item 11 amends subrule 39.1(7) to update the list of refundable tax credits for individual income tax purposes.

Items 12 and 13 amend subrules 39.5(10) and 39.5(11) to specify that the filing threshold for individual income tax must reflect an adjustment for the pension exclusion and phase-out exclusion for social security benefits.

Items 14, 15 and 16 amend paragraphs 39.7(1)“a,” “b” and “c” to correct references to Iowa Code sections.

Items 17, 18 and 19 amend paragraph 40.38(1)“b” and the introductory paragraph and subparagraphs (7) and (9) of paragraph 40.38(1)“f” regarding the Iowa capital gains exclusion for individual income tax to clarify provisions regarding material participation for work done as an investor, work done involving rental activities, and record-keeping requirements.

Items 20 and 21 amend subrule 41.3(1) to provide that the federal net investment income tax, also known as the unearned income Medicare contribution tax, is considered to be federal income tax that can be deducted for individual income tax.

Item 22 amends rule 701—42.44(422) to update the sequence of tax credits allowed to be claimed for individual income tax.

Item 23 amends subrule 42.48(2) regarding the solar energy system tax credit for individual income tax, which is based on a percentage of the federal credit, to use the term “placed in service,” which is the term used in determining when the federal credit can be claimed.

Item 24 amends subrule 43.3(1) to correct a reference to an Iowa Code section.

Item 25 amends subrule 46.1(2) to remove obsolete provisions regarding Iowa withholding tax for periods prior to January 1, 2001.

Item 26 amends subrule 48.7(2) to reference the new amount of the personal exemption credit for individual income tax for years beginning on or after January 1, 1998.

Items 27 and 28 amend paragraph 52.1(1)“d” and subrule 52.1(4) to reference a 2010 Iowa Supreme Court decision regarding the definition of intangible property which may require the filing of corporation income tax returns.

Item 29 amends rule 701—52.12(422) to update the sequence of tax credits allowed to be claimed for corporation income tax.

Item 30 amends subrule 52.44(2) regarding the solar energy system tax credit for corporation income tax, which is based on a percentage of the federal credit, to use the term “placed in service,” which is the term used in determining when the federal credit can be claimed. This amendment is similar to the one in Item 23.

Item 31 amends rule 701—53.8(422) by adding new subrules 53.8(3), 53.8(4), 53.8(5) and 53.8(6) to provide that deductions for charitable contributions for corporation income tax will not be allowed if the taxpayer claimed a charitable conservation tax credit, school tuition organization tax credit, endow Iowa tax credit, or from farm to food donation tax credit for the same contribution.

Item 32 amends the implementation sentence for rule 701—53.8(422).

Item 33 amends subrule 58.5(4) to remove obsolete language regarding the alternative minimum tax credit for franchise tax for periods beginning prior to January 1, 1990, and to add new examples regarding the calculation of the alternative minimum tax credit.

Item 34 adopts new rule 701—59.17(15E,422) to specify that the deduction for charitable contributions for franchise tax will not be allowed if the taxpayer claimed an endow Iowa tax credit for the same contribution.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than January 13, 2014, to the Policy Section, Tax Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before December 31, 2013. Such written comments should be directed to the Policy Section, Tax Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Persons who want to convey their views orally should contact the Policy Section, Policy and Communications Division, Department of Revenue, at (515)281-8450 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by December 31, 2013.

After analysis and review of this rule making, no adverse impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 422 and Executive Order Number 8.

The following amendments are proposed.

ITEM 1. Amend paragraph **3.1(4)“a”** as follows:

a. The person must be subject to Iowa tax on Iowa source income or have Iowa tax collection responsibilities and must have tax due;

ITEM 2. Amend subrule 6.1(2) as follows:

**6.1(2) Organization of the department.** The department consists of the office of the director; the following divisions: ~~compliance~~, property tax, tax policy and communications, ~~revenue operations~~, internal services, ~~and technology and information management~~ tax management, research and analysis, process improvement and innovation; and the state board of tax review. For ease of administration, the director has organized the department's divisions in some instances into bureaus, sections, subsections and units.

a. *The office of the director.* The office of the director consists of the director and the following areas within this office: strategic planning, ~~internal audit~~, ~~clerk of the hearing section~~, and public/private partnership, ~~and research and fiscal analysis~~. The essential functions of the director's office include:

(1) Overall management of the agency and review of protest and revocation cases on appeal.  
(2) Strategic planning and coordination of the future operations and goals of the department.  
(3) Providing financial checks and balances within the department.  
(4) ~~The clerk of the hearing section receives all protests, tracks protests and coordinates protest processing.~~

~~(5)~~ (4) Public/private partnership provides for a working relationship between the public sector and private sector.

b. *Divisions.*

(1) Property tax division. The property tax division provides technical assistance and training to local assessing jurisdictions, ensures equal assessment of property, and is responsible for determining valuation for railroads, electric, water, and pipeline companies.

(2) ~~Compliance~~ Tax management division. The ~~compliance~~ tax management division includes the ~~examination section, investigative audit section, in-state field offices and out-of-state field offices~~ processing services section, the compliance services section and the collection services section. The essential functions of the ~~compliance~~ tax management division include:

1. ~~Examination, which includes office examination of returns, assessment, and review and approval of refund claims, and which identifies nonfilers and those that underreport income~~ Functions performed by the processing services section, including registration of taxpayers, deposit of tax revenue, processing of tax returns, records management and mail services;

2. ~~Investigative audit, which is responsible for audits for criminal prosecution, reviews cases for potential prosecution and represents the department in criminal proceedings and depositions~~ Functions performed by the compliance services section, including office examination of returns, identification of nonfilers and underreporters of income, assessment, and review and approval of refund claims. The compliance services section also performs field audits and is responsible for audits for criminal prosecution; and

3. ~~In-state field offices, which provide assistance to taxpayers concerning procedure and perform audits; and~~ Functions performed by the collection services section, which is responsible for the timely

collection of past-due tax liabilities, as well as collection activities for the judicial branch of state government and for other state agencies and local governments.

4. ~~Out-of-state field offices, which perform audits for all taxes throughout the country from nine locations throughout the United States.~~

(3) Policy Tax policy and communications division. The tax policy and communications division consists of audit services, taxpayer services, and policy and tax research and data analysis. The essential functions of the tax policy and communications division include:

1. Audit Functions performed by the audit services section, which includes the development and review of develops and reviews audit programs and completed audits, manuals, and guidelines for auditors, and which coordinates the administrative process of protests and protest resolution and includes the clerk of the hearings section;

2. Taxpayer Functions performed by the taxpayer services section, which is responsible for responding to inquiries from the public, practitioners and other agencies, drafting brochures and graphics, completing returns, maintaining the department's library and Web page, and coordinating public education by the department; and

3. Policy Functions performed by the tax policy section, which is responsible for the interpretation of legislation, statutes and cases, developing and maintaining rules for the department and monitoring tax-related issues considered by the general assembly and the United States Congress. This section also drafts declaratory orders, offers technical advice and completes studies and reports;

4. Tax research and data analysis, which provides research, data information, fiscal analysis and reporting, which includes fact-finding, defining issues, issue resolution, and projection of revenues, and evaluates the fiscal impact of tax legislation and policies on state budget.

(4) Internal services division. The essential functions of the internal services division include:

1. Central Functions performed by the central accounting team, which includes operating budget development, maintenance and reporting; and

2. Employee Functions performed by the employee resource team, which governs personnel activities, payroll, benefits, quality of the environment and customer service.

(5) ~~Technology and information management division. This division consists of information resources management, application design and development, program management, program evaluation, operations, forms management, reporting, and technical planning and support. The essential functions of the technology and information management division include:~~ Research and analysis division. The essential functions of the research and analysis division include:

1. ~~Application development, which includes system analysis, programming, database administration and support;~~

2. ~~Forms management, which includes review and performing the function of compliance with federal and state law and managing electronic filing programs; and~~

3. ~~Technical planning and support, which includes technical support to the agency on software and hardware issues, and which assists in application and development regarding technology-related issues.~~

1. Functions performed by the research and program analysis section, which provides research on tax issues, compiles statistical tax data, undertakes tax credit tracking and analysis, projects state receipts and refunds, and evaluates the fiscal impact of tax legislation and policies on the state budget; and

2. Functions performed by the performance analysis section, which develops and maintains performance measures for the department to align the department's resources, systems, and employees to meet strategic goals and priorities.

(6) ~~Revenue operations division. This division includes collections (accounts receivable, central collections, field office advanced collections), customer accounts, document processing, and data operations and information technology. The essential functions of the revenue operations division include:~~ Process improvement and innovation division. The essential functions of the process improvement and innovation division include:

1. ~~Collections, which includes accounts receivable, central collections, field office advanced collections and customer accounts;~~

~~2. Document processing, which includes preparing tax information for processing, deposits and records; and~~

~~3. Data entry, which includes entry of all tax forms, files, and databases, and which edits taxpayer documents and mailing information.~~

1. Functions performed by the application development section, including system analysis, programming, database administration and support, in coordination with the information technology enterprise of the department of administrative services;

2. Functions performed by the technical planning and support section, including providing technical support to the department on software and hardware issues, in coordination with the information technology enterprise of the department of administrative services; and

3. Functions performed by the process improvement section, including identifying, analyzing, and improving existing processes within the department.

ITEM 3. Amend rule 701—7.8(17A), introductory paragraph, as follows:

**701—7.8(17A) Protest.** Any person wishing to contest an assessment, denial of refund claim, or any other department action, except licensing, which may culminate in a contested case proceeding shall file a protest, in writing, with the department within the time prescribed by the applicable statute or rule for filing notice of application to the director for a hearing. The protest must either be delivered to the department by electronic means or by United States Postal Service or a common carrier, by ordinary, certified, or registered mail, directed to the attention of the clerk of the hearings section at P.O. Box 140472 14457, Des Moines, Iowa 50306, or be personally delivered to the clerk of the hearings section or served on the clerk of the hearings section by personal service during business hours. For the purpose of mailing, a protest is considered filed on the date of the postmark. If a postmark date is not present on the mailed article, then the date of receipt of protest will be considered the date of mailing. Any document, including a protest, is considered filed on the date personal service or personal delivery to the office of the clerk of the hearings section for the department is made. See Iowa Code section 622.105 for the evidence necessary to establish proof of mailing.

ITEM 4. Amend paragraph 7.17(8)“d” as follows:

*d.* When the director initially presides at a hearing or considers decisions on appeal from or review of a proposed decision by the presiding officer other than the director, the order becomes the final order of the department for purposes of judicial review or rehearing unless there is an appeal to or review on motion of a second agency within the time provided by statute or rule. When a presiding officer other than the director presides at the hearing, the order becomes the final order of the department for purposes of judicial review or rehearing unless there is an appeal to or review on motion of the director within 30 days of the date of the order, including Saturdays, Sundays, and legal holidays, or 10 days, excluding Saturdays, Sundays, and legal holidays, for a revocation order pursuant to rule 701—7.23(17A). However, if the contested case proceeding involves a question of an award of reasonable litigation costs, the proposed order on the substantive issues shall not be appealable to or reviewable by the director on the director’s motion until the issuance of a proposed order on the reasonable litigation costs. If there is no such appeal or review within 30 days or 10 days, whichever is applicable, from the date of the proposed order on reasonable litigation costs, both the proposed order on the substantive issues and the proposed order on the reasonable litigation costs become the final orders of the department for purposes of judicial review or rehearing. On an appeal from, review of, or application for rehearing concerning the presiding officer’s order, the director has all the power which the director would initially have had in making the decision; however, the director will consider only those issues or selected issues presented at the hearing before the presiding officer or any issues of fact or law raised independently by the presiding officer, including the propriety of and the authority for raising issues. The parties will be notified of those issues which will be considered by the director.

ITEM 5. Amend subrule 8.2(2) as follows:

**8.2(2) Mailing addresses.** The following post office box numbers should be used when corresponding with the department. All addresses are completed: Des Moines, Iowa 50306.

| <u>Box Number</u> | <u>Addressee</u>   |
|-------------------|--|
| 1792              | <del>Individual Income Tax Returns</del> <u>Motor Vehicle Fuel Tax Returns</u>   |
| 9187              | <del>Motor Vehicle Fuel Tax Returns</del> <u>Individual Income Tax Returns</u>   |
| <del>10306</del>  | <del>Deposit Unit</del>  |
| 10330             | Central Collections Unit   |
| 10411             | <del>Withholding Tax Returns</del> <u>Payments</u><br><u>Verified Summary of Payments</u>  |
| 10412             | Sales and Use Tax Returns <u>and Payments</u>  |
| 10413             | Franchise Tax Returns and Estimated Payments<br><del>Field Services</del>  |
| 10455             | Insurance Premiums Tax<br>Household Hazardous Materials<br>Environmental Protection Charge   |
| 10456             | <del>Compliance</del> <u>Tax Management Division, Compliance</u><br><u>Services Income Tax</u><br><del>Examination Section</del>   |
| 10457             | Policy and Communications Division   |
| 10459             | Property Tax<br>Rent Reimbursement Claims  |
| 10460             | Internal Services Division<br><del>Technology and Information Management Division</del><br><u>Process Improvement and Innovation Division</u>                                |
| 10465             | <del>Revenue Operations Division</del> <u>Tax Management Division,</u><br><u>Business and Excise Tax</u><br><del>Customer Accounts</del><br><del>Registration Services</del> |
| 10466             | Individual <u>and Corporation Income Tax</u> Estimated Payments  |
| 10467             | Fiduciary and Inheritance Tax  |
| 10468             | Corporation Income Tax Returns <del>and Estimated Payments</del>   |
| 10469             | Property Tax   |
| 10470             | <del>Withholding—Verified Summary of Payments Report</del><br><u>Registration Services</u>   |

| <u>Box Number</u> | <u>Addressee</u>   |
|-------------------|--|
| 10471             | Accounts Receivable  |
| 10472             | <del>Hearings Section</del> <u>Cigarette and Tobacco Tax</u> |
| 10486             | Property Assessment Appeal Board                             |
| <u>14454</u>      | <u>Tax Management Division, Field Audit</u>                  |
| <u>14457</u>      | <u>Audit Services Section</u>                                |
|                   | <u>Hearings Section</u>                                      |
| <u>14461</u>      | <u>Research and Analysis Division</u>                        |

ITEM 6. Amend paragraph **8.5(2)“b”** as follows:

b. The ERO must provide the taxpayer a copy of all ~~forms and~~ information to be filed. The taxpayer and ERO must retain all tax documentation for three years. The Declaration for e-File Return form and accompanying schedules are to be furnished to the department only when specifically requested.

ITEM 7. Amend rule 701—10.72(452A) as follows:

**701—10.72(452A) Interest.** ~~Interest at the rate of three-fourths of one percent per month, based on the tax due, shall be assessed against the taxpayer for each month such tax remains unpaid prior to January 1, 1982. The interest shall accrue from the date the return was required to be filed. Interest shall not apply to penalty. Each fraction of a month shall be considered a full month for the computation of interest. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982.~~

~~Refunds on reports or returns filed on or after July 1, 1986, but before July 1, 1997, will accrue interest beginning on the first day of the third calendar month following the date of payment or the date the return was filed or due to be filed, whichever is later, at the rate in effect under Iowa Code section 421.7, counting each fraction of a month as an entire month. Refunds on reports or returns filed on or after July 1, 1997, will accrue interest beginning on the first day of the second calendar month following the date of payment or the date the return was filed or due to be filed, whichever is later, at the rate in effect under Iowa Code section 421.7, counting each fraction of a month as an entire month. Claims for refund filed under Iowa Code sections 452A.17 and 452A.21 will accrue interest beginning with the first day of the second calendar month following the date the refund claim is received by the department. See rule 701—10.3(422,450,452A).~~

This rule is intended to implement Iowa Code section 452A.65 ~~as amended by 1997 Iowa Acts, House File 266.~~

ITEM 8. Amend rule 701—38.10(422), introductory paragraph, as follows:

**701—38.10(422) Indexation.** ~~Acts of the Sixty-ninth General Assembly, 1981 Regular Session, chapter 132, and Iowa Code section 422.5 provide provides for the adjustment of the tax brackets and civil service annuity exclusion by a cumulative inflation factor to be determined by the director. The requirement that provided that the state general fund balance on June 30 of the prior calendar year had to be \$60 million or more before there was indexation of the tax rate brackets for the current year was repealed for tax years beginning on or after January 1, 1996.~~

ITEM 9. Amend rule **701—38.15(422)**, numbered paragraphs **“4”** and **“5,”** as follows:

4. Whether or not it would be equitable to hold the innocent spouse for the substantial understatement. Innocent spouse relief applies only if, taking into account all facts and circumstances, it would be inequitable to hold the claimed innocent spouse liable for the deficiency in tax for the taxable year attributable to the substantial understatement. Factors taken into account in determining whether it is inequitable to hold a spouse liable for a tax deficiency include whether the spouse seeking relief has

been deserted, divorced, separated, or widowed or has been the subject of abuse or financial control by the other spouse. See Internal Revenue Service Notice 2012-8.

Another important factor in determining equitable treatment for the person claiming innocent spouse relief is whether the person received a benefit attributable to the substantial understatement of taxes. The fact that the spouse received a benefit in the nature of “ordinary support” does not support a finding of significant benefit to deny the spouse relief. In addition, ordinary family support may include maintaining an affluent lifestyle if the standard of living is not enhanced by the tax understatement.

Where the taxpayer participated in the financial affairs of the other spouse and enjoyed the benefits from the activities of the other spouse, innocent spouse relief will not be granted.

5. Time period for requesting innocent spouse relief. For tax periods beginning on or after January 1, 2004, innocent spouse relief must be requested within two years after the date the department initiates collection action on an income tax deficiency or assessment against the person claiming innocent spouse relief. However, an extended time period to request innocent spouse relief can be granted under the provisions of Internal Revenue Service Notice 2011-70, which became effective July 25, 2011.

ITEM 10. Amend subrule **38.17(3)**, fourth unnumbered paragraph, as follows:

Since military nonresidents of Iowa cannot be taxed on their military pay while they are stationed in Iowa, the military pay cannot be considered for purposes of Iowa’s taxation of nonresidents in accordance with the Servicemembers Civil Relief Act, Public Law 108-189. The military pay of the nonresident of Iowa must be excluded from the computation of the nonresident credit set forth in rule 701—42.5(422). This exclusion from the computation of the nonresident credit applies to military pay of nonresident servicemembers who are in an active duty status as defined under Title 10 of the United States Code.

ITEM 11. Amend subrule 39.1(7) as follows:

**39.1(7) Returns filed for refund.** A taxpayer whose Iowa source net income or all source net income is less than the amount for which the filing of an Iowa individual income tax return is required must file a return to receive a refund of Iowa income tax withheld or Iowa estimated tax paid in the tax year or to receive a refund from an Iowa refundable tax credit. Refundable tax credits include the child and dependent care credit, the early childhood development tax credit, the research activities credit, the motor vehicle fuel tax credit, the claim of right credit (if elected in accordance with rule 701—38.18(422)), the assistive device credit, the historic preservation and cultural and entertainment district tax credit, the ethanol blended gasoline tax credit, the investment tax credit for value-added agricultural products or biotechnology-related processes, the soy-based cutting tool oil tax credit, the wage-benefit tax credit, the soy-based transformer fluid tax credit, the E-85 gasoline promotion tax credit, and the biodiesel blended fuel tax credit, the ethanol promotion tax credit, and the E-15 plus gasoline promotion tax credit.

ITEM 12. Amend subrule 39.5(10), introductory paragraph, as follows:

**39.5(10) Thirteen thousand five hundred dollar exemption.** For tax years beginning on or after January 1, 1993, all taxpayers, except single taxpayers described in subrule 39.4(1), whose net income as computed under Iowa Code section 422.7, plus the amount of a lump-sum distribution for which the taxpayer has elected to be separately taxed for federal income tax purposes, the partial exclusion of pension and other retirement benefits described in rule 701—40.47(422), and the phase-out exclusion for social security benefits described in 701—subrule 40.23(3), is \$13,500 or less are exempt from paying Iowa individual income tax subject to the following conditions:

ITEM 13. Amend subrule 39.5(11), introductory paragraph, as follows:

**39.5(11) Nine thousand dollar exemption.** For tax years beginning on or after January 1, 1993, single taxpayers described in subrule 39.4(1); whose net income as computed under Iowa Code section 422.7, plus the amount of a lump-sum distribution for which the taxpayer has elected to be separately taxed for federal income tax purposes, the partial exclusion of pension and other retirement benefits described in rule 701—40.47(422), and the phase-out exclusion for social security benefits described in 701—subrule 40.23(3), is \$9,000 or less; are exempt from paying Iowa individual income tax subject to the following conditions:

ITEM 14. Amend paragraph **39.7(1)“a,”** introductory paragraph, as follows:

*a. An exemption of \$9,000 for single taxpayers and an exemption of \$13,500 for all other taxpayers.* To be eligible for the \$9,000 or less exemption for single taxpayers and the \$13,500 or less exemption for all other taxpayers as provided in Iowa Code section 422.5, subsection 2 3, the total amount of a lump-sum distribution subject to the separate federal tax must be included in the net income. If this net income (including the lump-sum distribution income) is less than \$9,000 for single taxpayers and less than \$13,500 for all other taxpayers, then no tax (other than Iowa minimum tax) is due. The Iowa tax on lump-sum distributions and the computed tax may be limited to the amount of income tax that exceeds \$9,000 for single taxpayers and \$13,500 for all other taxpayers (including the lump-sum distribution income).

ITEM 15. Amend paragraph **39.7(1)“b,”** introductory paragraph, as follows:

*b. An exemption of \$18,000 for single taxpayers and an exemption of \$24,000 for other taxpayers who are 65 years of age or older.* These exemption amounts apply for tax years beginning on or after January 1, 2007, but before January 1, 2009. To be eligible for the \$18,000 or less exemption for single taxpayers and the \$24,000 or less exemption for all other taxpayers as provided in 2007 Iowa Code section 422.5, subsection 2A 3A, the total amount of a lump-sum distribution subject to the separate federal tax must be included in the net income. If this net income (including the lump-sum distribution income) is less than \$18,000 for single taxpayers and less than \$24,000 for all other taxpayers, then no tax (other than Iowa minimum tax) is due. The Iowa tax on lump-sum distributions and the computed tax may be limited to the amount of income tax that exceeds \$18,000 for single taxpayers and \$24,000 for all other taxpayers (including the lump-sum distribution income).

ITEM 16. Amend paragraph **39.7(1)“c,”** introductory paragraph, as follows:

*c. An exemption of \$24,000 for single taxpayers and an exemption of \$32,000 for all other taxpayers who are 65 years of age or older.* These exemption amounts apply for tax years beginning on or after January 1, 2009. To be eligible for the \$24,000 or less exemption for single taxpayers and the \$32,000 or less exemption for all other taxpayers as provided in Iowa Code section 422.5, subsection 2B 3B, the total amount of a lump-sum distribution subject to the separate federal tax must be included in the net income. If this net income (including the lump-sum distribution income) is less than \$24,000 for single taxpayers and less than \$32,000 for all other taxpayers, then no tax (other than Iowa minimum tax) is due. The Iowa tax on lump-sum distributions and the computed tax may be limited to the amount of income tax that exceeds \$24,000 for single taxpayers and \$32,000 for all other taxpayers (including the lump-sum distribution income).

ITEM 17. Amend paragraph **40.38(1)“b”** as follows:

*b. Work done in an activity by an individual in the individual’s capacity as an investor is not considered to be material participation in the business or activity unless the investor is directly involved in the day-to-day management or operations of the activity or business. Investor-type activities include the study and review of financial statements or reports on operations of the activity, preparing or compiling summaries or analyses of finances or operations of the activity for the individual’s own use, and monitoring the finances or operations of the activity in a nonmanagerial capacity.*

ITEM 18. Amend paragraph **40.38(1)“f,”** introductory paragraph, as follows:

*f. The following paragraphs provide clarification regarding ~~the facts and circumstances test in~~ subparagraph 40.38(1)“e”(7) material participation:*

ITEM 19. Amend subparagraphs **40.38(1)“f”(7)** and **(9)** as follows:

*(7) Rental activities or businesses.* For purposes of subrules 40.38(1) and 40.38(2), the general rule is that a taxpayer may have material participation in the rental activity unless covered by a specific exception in this subrule (for example, the exceptions for farm rental activities in subparagraphs 40.38(1)“f”(4), (5) and (6)). Rental activity or rental business is as the term is used in Section 469(c) of the Internal Revenue Code. Rental activity or rental business does not typically involve day-to-day involvement since gross income from this activity represents amounts paid mainly for the use of the property. Examples of qualifying involvement in operations of the property that are considered material

participation activities if performed on a regular, continuous and substantial basis include advertising, interviewing potential tenants, preparing leases, collecting rent, handling security deposits, receiving questions and complaints from tenants, and performing routine maintenance.

EXAMPLE. Ryan Stanley is an attorney who has owned two duplex units since 1998 and has received rental income from these duplexes since 1998. Mr. Stanley is responsible for the maintenance of the duplexes and may hire other individuals to perform repairs and other upkeep on the duplexes. However, no person spends more time in operating, managing and maintaining the duplexes than Mr. Stanley, and Mr. Stanley spends more than 100 hours per year in operating, managing and maintaining the duplexes. The duplexes are sold in 2011, resulting in a capital gain. Mr. Stanley can claim the capital gain deduction on the 2011 Iowa return since he met the material participation requirements for this rental activity.

(9) Record-keeping requirements. Taxpayers are required to provide proof of services performed and the hours attributable to those services. Detailed records should be ~~kept~~ maintained by the taxpayer, on as close to a daily basis as possible at or near the time of the performance of the activity, to verify that the material participation test has been met ~~because the burden is on the taxpayer to demonstrate that the material participation test has been met.~~ However, material participation can be established by any other reasonable means, such as approximating the number of hours based on appointment books, calendars, or narrative summaries. Records prepared long after the activity, in preparation of an audit or proceeding, are insufficient to establish participation in an activity.

ITEM 20. Amend paragraphs **41.3(1)“b”** and **“c”** as follows:

b. Tax paid at any time during the taxable year on a filing of federal estimated tax or on any amendment to such filing. Where a husband and wife file separate Iowa returns or separately on a combined Iowa return, the federal estimated tax payments made in the tax year shall be prorated between the spouses by the ratio of each spouse's income not subject to withholding to the total income not subject to withholding of both spouses, including the federal estimated tax payment made in January of the tax year which was made for the prior tax year. If an estimated tax payment or portion of the payment is made for self-employment tax, then the spouse who has earned the self-employment income shall report the amount of estimated tax designated as self-employment tax. The federal tax deduction for the tax year does not include the self-employment tax paid through the federal estimated payments made in the tax year. However, one-half of the self-employment tax paid in the tax year is deductible in computing federal adjusted gross income pursuant to Section 164(f) of the Internal Revenue Code so this self-employment tax is also deductible in computing net income. If an estimated tax payment or portion of the payment is made for the federal net investment income tax computed under Section 1411 of the Internal Revenue Code for tax years beginning on or after January 1, 2013, see paragraph 41.3(1)“f” on how the federal net income tax should be prorated between spouses.

c. Any additional federal tax on a prior federal return paid during the taxable year. Where a husband and wife file separately or separately on a combined Iowa return, additional federal tax paid shall be prorated between the spouses by the ratio of net income reported by each spouse to total net income of both spouses in the year for which the additional federal tax was paid. If additional federal tax paid includes federal self-employment tax, then that amount of self-employment tax shall be deducted by the spouse who earned the self-employment income. Any federal tax paid for a tax year in which an Iowa individual income tax return was not required to be filed is not allowed as a deduction in the year the federal taxes were paid. If additional federal tax paid includes the federal net investment income tax computed under Section 1411 of the Internal Revenue Code for tax years beginning on or after January 1, 2013, see paragraph 41.3(1)“f” on how the federal net income tax should be prorated between spouses.

EXAMPLE 1. Individual A earned \$8,500 in income for the 2004 tax year and paid \$200 in federal tax with the filing of the federal return in 2005. Individual A was not required to file an Iowa return for 2004 because the Iowa net income was under \$9,000. Individual A cannot claim a deduction for the \$200 in federal tax paid on the 2005 Iowa return because an Iowa return was not required to be filed for the 2004 tax year.

EXAMPLE 2. Individual B moved into Iowa on January 1, 2005, and filed an initial Iowa individual income tax return for the 2005 tax year. Individual B paid \$1,000 in additional federal income tax with

the filing of the 2004 federal income tax return in 2005. Individual B cannot claim a deduction for the \$1,000 in federal tax paid on the 2005 Iowa return because an Iowa return was not filed for the 2004 tax year.

ITEM 21. Adopt the following **new** paragraph **41.3(1)“f”**:

*f.* For tax years beginning on or after January 1, 2013, the federal net investment income tax, also known as the unearned income Medicare contribution tax, computed under Section 1411 of the Internal Revenue Code. The federal net investment income tax is computed on the lesser of net investment income for the tax year or the excess of the modified adjusted gross income for the tax year over a threshold amount.

Where a married couple file separate returns or separately on a combined Iowa return, the federal net investment income tax, if computed on net investment income, shall be prorated between the spouses by the ratio of net investment income reported by each spouse to total net investment income of both spouses in the year for which the federal net investment income tax was paid. Where a married couple file separate returns or separately on a combined Iowa return, the federal net investment income tax, if computed on the excess of modified adjusted gross income over a threshold amount, shall be prorated between the spouses by the ratio of net income reported by each spouse to total net income of both spouses in the year for which the federal net investment income tax was paid.

ITEM 22. Amend rule 701—42.44(422) as follows:

**701—42.44(422) Deduction of credits.** The credits against computed tax set forth in Iowa Code sections 422.5, 422.8, 422.10 through 422.12C, and 422.110 shall be ~~deducted~~ claimed in the following sequence:

1. Personal exemption credit.
2. Tuition and textbook credit.
3. Volunteer fire fighter and volunteer emergency medical services personnel tax credit.
4. Nonresident and part-year resident credit.
5. Franchise tax credit.
6. S corporation apportionment credit.
7. Disaster recovery housing project tax credit.
8. School tuition organization tax credit.
9. Venture capital tax credits (excluding redeemed Iowa fund of funds tax credit).
10. Endow Iowa tax credit.
11. Agricultural assets transfer tax credit.
12. ~~Film qualified expenditure tax credit.~~ Custom farming contract tax credit.
13. ~~Film investment tax credit.~~ Film qualified expenditure tax credit.
14. ~~Redevelopment tax credit.~~ Film investment tax credit.
15. ~~Investment tax credit.~~ Redevelopment tax credit.
16. ~~Wind energy production tax credit.~~ From farm to food donation tax credit.
17. ~~Renewable energy tax credit.~~ Investment tax credit.
18. ~~Redeemed Iowa fund of funds tax credit.~~ Wind energy production tax credit.
19. ~~New jobs tax credit.~~ Renewable energy tax credit.
20. ~~Economic development region revolving fund tax credit.~~ Redeemed Iowa fund of funds tax credit.
21. ~~Geothermal heat pump tax credit.~~ New jobs tax credit.
22. ~~Solar energy system tax credit.~~ Economic development region revolving fund tax credit.
23. ~~Charitable conservation contribution tax credit.~~ Geothermal heat pump tax credit.
24. ~~Alternative minimum tax credit.~~ Solar energy system tax credit.
25. ~~Historic preservation and cultural and entertainment district tax credit.~~ Charitable conservation contribution tax credit.
26. ~~Ethanol-blended gasoline tax credit or ethanol promotion tax credit.~~ Alternative minimum tax credit.

27. ~~Research activities credit.~~ Historic preservation and cultural and entertainment district tax credit.
28. ~~Out-of-state tax credit.~~ Ethanol promotion tax credit.
29. ~~Child and dependent care credit or early childhood development tax credit.~~ Research activities credit.
30. ~~Motor fuel credit.~~ Out-of-state tax credit.
31. ~~Claim of right credit (if elected in accordance with rule 701—38.18(422)).~~ Child and dependent care tax credit or early childhood development tax credit.
32. ~~Wage-benefits tax credit.~~ Motor fuel tax credit.
33. ~~Refundable portion of investment tax credit, as provided in subrule 42.14(2).~~ Claim of right credit (if elected in accordance with rule 701—38.18(422)).
34. ~~E-85 gasoline promotion tax credit.~~ Wage-benefits tax credit.
35. ~~Biodiesel blended fuel tax credit.~~ Refundable portion of investment tax credit, as provided in subrule 42.14(2).
36. ~~E-15 plus gasoline promotion tax credit.~~ E-85 gasoline promotion tax credit.
37. ~~Earned income tax credit.~~ Biodiesel blended fuel tax credit.
38. ~~Estimated payments, payment with vouchers, and withholding tax.~~ E-15 plus gasoline promotion tax credit.
39. Earned income tax credit.
40. Iowa taxpayers trust fund tax credit.
41. Estimated payments, payment with vouchers, and withholding tax.

This rule is intended to implement Iowa Code sections 422.5, 422.8, 422.10, 422.11, 422.11A, 422.11B, 422.11D, 422.11F, 422.11H, 422.11I, 422.11J, 422.11L, 422.11M, 422.11N, 422.11O, 422.11P, 422.11Q, 422.11S, 422.11W, 422.11X, 422.12, 422.12B, 422.12C and 422.110 and 2012 2013 Iowa Acts, House File 2337 599, sections 38 to 40 and 2013 Iowa Acts, Senate Files 295 and 452.

ITEM 23. Amend subrule **42.48(2)**, second and third unnumbered paragraphs, as follows:

The federal residential energy efficient tax credits and the federal energy tax credits for solar energy systems are currently allowed for installations that are ~~completed~~ placed in service on or before December 31, 2016. Therefore, the Iowa tax credit will be available for the 2012 to 2016 tax years for systems placed in service on or before December 31, 2016. The solar energy system must be installed on or after January 1, 2012, to qualify for the Iowa credit. If the taxpayer installed a solar energy system and initially reported the federal tax credit for a tax year beginning prior to January 1, 2012, no Iowa credit will be allowed.

EXAMPLE: A taxpayer reported a \$9,000 residential energy efficient tax credit on the 2011 federal return due to an installation of a solar energy system that was ~~completed~~ placed in service in 2011. The taxpayer applied \$4,000 of the credit on the taxpayer's 2011 federal return since the federal tax liability was \$4,000. The remaining \$5,000 of federal credit was applied on the 2012 federal return. No credit will be allowed on the 2012 Iowa return since the installation was ~~completed~~ placed in service before January 1, 2012.

ITEM 24. Amend subrule **43.3(1)**, first unnumbered paragraph, as follows:

In addition, the claim for refund must be filed within one of the time periods specified in Iowa Code section ~~422.73(2)~~ 422.73(1) in order for the refund claim to be timely so that the claim may be considered on its merits by the department.

ITEM 25. Amend subrule 46.1(2) as follows:

**46.1(2)** *Withholding on pensions, annuities and other nonwage payments to Iowa residents.* State income tax is required to be withheld from payments of pensions, annuities, supplemental unemployment benefits and sick pay benefits and other nonwage income payments made to Iowa residents in those circumstances mentioned in the following paragraphs. This subrule covers those nonwage payments described in Sections 3402(o), 3402(p), 3402(s), 3405(a), 3405(b), and 3405(c) of the Internal Revenue Code. This includes, but is not limited to, payments from profit-sharing plans, stock bonus plans, deferred compensation plans, individual retirement accounts, lump-sum distributions from qualified retirement

plans, other retirement plans, and annuities, endowments and life insurance contracts issued by life insurance companies. These payments are subject to Iowa withholding tax if they are also subject to federal withholding tax. However, no state income tax withholding is required from nonwage payments to residents to the extent those payments are not subject to state income tax. ~~Generally, no state income tax is required to be withheld from nonwage payments to residents in circumstances where the payment amounts are less than \$250 or the taxable portions of the payments are less than \$250 in situations where the payers know the taxable amounts. In instances where a payment amount or taxable amount is \$250 or more but the payment amount or the taxable amount for the year is less than \$3,000, no state income tax is required to be withheld. See paragraph 46.1(2) "h" for threshold amounts for withholding from payments of pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement incomes which are made on or after January 1, 2001.~~ In the case of some nonwage payments to residents, such as payments of pensions and annuities, no state income tax is required to be withheld if no federal income tax is being withheld from the payments of the pensions and annuities. The rate of withholding on the nonwage payments described in this subrule is 5 percent of the payment amounts or 5 percent of the taxable amounts unless specified otherwise.

For purposes of this subrule, an individual receiving nonwage payments will be considered to be an Iowa resident and subject to this subrule if the individual's permanent residence is in Iowa. The fact that a nonwage payment is deposited in a recipient's account in a financial institution located outside Iowa does not mean that the recipient's permanent residence is established in the place where the financial institution is situated.

Payers of pension and annuity benefits and other nonwage payments have the option of either withholding Iowa income tax from these payments on the basis of tables and formulas included in the Iowa withholding tax guide of the department of revenue or withholding Iowa income tax from these payments at the rate of 5 percent. State income tax is required to be withheld by payers in situations when federal income tax is being withheld from the nonwage payments.

*a. Withholding from pension and annuity payments to residents.* Withholding of state income tax is required from payments of pensions and annuities to Iowa residents to the extent that the recipients of the payments have not filed with the payers of the benefits election forms which specify that no federal income tax is to be withheld. Therefore, state income tax is to be withheld when federal income tax is being withheld from the pensions or annuities. See paragraph 46.1(2) "h" for threshold amounts for withholding from payments of pensions, annuities, and other retirement incomes which are made on or after January 1, 2001.

However, although Iowa income tax is ordinarily required to be withheld from pension and annuity payments made to Iowa residents if federal income tax is being withheld from the payments, no state income tax is required to be withheld if pension and annuity payments are not subject to Iowa income tax, as in the case of railroad retirement benefits which are exempt from Iowa income tax by a provision of federal law. ~~In addition, no Iowa income tax is required from a pension or annuity payment made to an Iowa resident to the extent that the payment amounts are less than \$250 or the taxable amounts of the payments are less than \$250 in instances where the payers know the taxable amounts of the payments.~~

*b. Withholding from payments to residents from profit-sharing plans, stock bonus plans, deferred compensation plans, individual retirement accounts and from annuities, endowments and life insurance contracts issued by life insurance companies.* Payments to Iowa residents from profit-sharing plans, stock bonus plans, deferred compensation plans, individual retirement accounts and payments from life insurance companies for contracts for annuities, endowments or life insurance benefits are subject to withholding of state income tax if federal income tax is withheld from the benefits. However, no state income tax is to be withheld from the income tax payments described above to the extent those income tax payments are exempt from Iowa income tax. See paragraph 46.1(2) "h" for thresholds for withholding from payments of pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement incomes which are made on or after January 1, 2001. ~~In addition, no state income tax is to be withheld in circumstances where payment amounts are less than \$250 or the taxable portions of the payments are less than \$250 in cases when the payer knows the taxable amount of the payment. There~~

~~is also no state income tax withholding in situations where the payment amount or the taxable amount is \$250 or more but the payment amount or the taxable amount for the year is less than \$3,000.~~

In cases where the recipients elect withholding of state income tax from the income payments, the payers are to withhold from the payments at a rate of 5 percent on the taxable portion of the payment, if that can be determined by the payer or on the entire income payment if the payer does not know how much of the payment is taxable. Once a recipient makes an election for state income tax withholding, that election will remain in effect until a later election is made.

*c. Withholding from payments to residents for supplemental unemployment compensation benefits and sick pay benefits.* Income payments made for supplemental unemployment compensation benefits described in Section 3402(o)(2)(a) of the Internal Revenue Code and for sick pay benefits are subject to withholding of state income tax. In the case of supplemental unemployment compensation benefits, those benefits are treated as wages for purposes of state income tax withholding. Therefore, state income tax should be withheld from these payments when federal income tax is withheld. The amount of state income tax withholding should be determined by the withholding tables provided in the Iowa employers' "Withholding Tax Guide."

In the case of state income tax withholding for sick pay benefits paid by third-party payers in accordance with Section 3402(o)(1) of the Internal Revenue Code, state income tax is to be withheld from the benefits by the payer only if state income tax withholding is requested by the payee of the benefits. However, payees of sick pay benefits should probably not request withholding from the benefits if the payees are eligible for the disability income exclusion authorized in Iowa Code section 422.7 and described in rule 701—40.22(422). If withholding is requested by the payee, the withholding should be done at a 5 percent rate on the sick pay benefits. ~~However, no withholding of state income tax should be made if the benefit payment is less than \$250.~~ Once withholding is started, it should continue until such time as the payee requests that no state income tax be withheld. For sick pay benefits not paid by third-party payers, state income tax is required to be withheld since federal income tax is required to be withheld.

*d. Voluntary state income tax withholding from unemployment benefit payments.* Recipients of unemployment benefit payments described in Section 3402(p)(2) of the Internal Revenue Code may elect to have state income tax withheld from the benefit payments at a rate of 5 percent. An individual's election to have state income tax withheld from unemployment benefits is separate from any election to have federal income tax withheld from the benefits.

*e. Withholding on lump-sum distributions from qualified retirement plans.* For lump-sum distribution payments from qualified retirement plans made to Iowa residents, state income tax is required to be withheld under the conditions described in this paragraph. No state income tax is required to be withheld from a lump-sum distribution payment to an Iowa resident in a situation where the payment is not subject to Iowa income tax. See paragraph 46.1(2) "h" for thresholds for withholding on lump-sum distributions issued on or after January 1, 2001. ~~In addition, Iowa income tax is not required to be withheld on the distribution to the extent that the amount of the distribution or the taxable amount, if known by the payer, is less than \$3,000.~~ Iowa income tax is to be withheld from a lump-sum distribution made to an Iowa resident to the extent that federal income tax is being withheld from the distribution. The rate of withholding of state income tax from the lump-sum distribution is 5 percent from the total distribution or 5 percent from the taxable amount if that amount is known by the payer. Note that in the case of a lump-sum distribution, the Iowa income tax imposed on the taxable amount of the distribution is 25 percent of the federal income tax on the distribution.

*f. Withholding of state income tax from nonwage payments to residents on the basis of tax tables and tax formulas.* State income tax from the nonwage payments made to Iowa residents may be withheld on the basis of formulas and tables included in the Iowa withholding tax guide of the department of revenue. See paragraph 46.1(2) "h" for threshold amounts for withholding from payments of pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement incomes which are made on or after January 1, 2001. When state income tax is being withheld based upon the formulas or tables in the withholding guide, the amounts of the nonwage payments are treated as wage payments for purposes of the tables or the formulas.

The frequency of the nonwage payments determines which of the withholding tables to use or the number of pay periods in the calendar year to use in the formula. For example, if the nonwage payment is made on a monthly basis, the monthly wage bracket withholding table should be utilized for withholding or 12 should be utilized in the formula to indicate that there will be 12 nonwage payments in the year.

The payers of nonwage payments should withhold state income tax from the nonwage payments to Iowa residents when federal income tax is being withheld from the nonwage payments. The payers should withhold from the nonwage payments to Iowa residents from tables or the formulas in the Iowa withholding guide on the basis of the number of withholding exemptions claimed on Form IA W-4 which has been completed by the payees of the payments. However, if a payee of a nonwage payment has not completed an IA W-4 form (Iowa employee's withholding allowance certificate) by the time a nonwage payment is to be made by the payer of the nonwage payment, the payer is to withhold state income tax on the basis that the payee has claimed one withholding allowance or exemption.

In a situation when a payee of a nonwage payment completes Form IA W-4 and claims exemption from state income tax withholding when federal income tax is being withheld from the nonwage payment, the payer of the nonwage payment should withhold state income tax using one withholding allowance or exemption unless the payee has verified exemption from state income tax.

*g. Withholding on distributions from qualified retirement plans that are not directly rolled over.* State income tax is to be withheld at a rate of 5 percent from the gross amount or taxable amount if known by the payer of the distribution made to Iowa residents if the distributions are not transferred directly to an IRA, Section 403(a) annuity or another qualified retirement plan. The distributions that are subject to state income tax withholding are those distributions that are subject to 20 percent withholding for federal income tax purposes. ~~However, if the gross amount or taxable amount of a distribution is less than \$3,000, state income tax withholding is not required.~~ See paragraph 46.1(2) "h" for thresholds for withholding from payments of pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement plans which are made on or after January 1, ~~1999~~ 2001.

*h. Withholding from distributions made on or after January 1, 2001, from pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement plans.* Effective for distributions made on or after January 1, 2001, from pension plans, annuities, individual retirement accounts, deferred compensation plans, and other retirement plans, state income tax is generally required to be withheld from the distributions when federal income tax is being withheld from the distributions, unless one of the exceptions for withholding in this paragraph applies. For purposes of this paragraph, the term "pensions and other retirement plans" includes all distributions of retirement benefits covered by the partial exemption described in rule 701—40.47(422).

State income tax is not required to be withheld from a distribution from a pension or other retirement plan if the distribution is an income which is not subject to Iowa income tax, such as a distribution of railroad retirement benefits. State income tax is also not required to be withheld from a pension plan or other retirement plan if the amount of the distribution is \$500 per month or less or if the taxable amount is \$500 or less and the person receiving the distribution is eligible for the partial exemption of retirement benefits described in rule 701—40.47(422), if the state taxable amount can be determined by the payee of the distribution. There is also no requirement for withholding state income tax from a pension or other retirement plan if the distribution is \$1,000 per month or less or if the taxable amount is \$1,000 or less and the person receiving the distribution is eligible for the partial exemption of retirement benefits described in rule 701—40.47(422) and that person has indicated an intention to file a joint state income tax return for the year in which the distribution is made. In instances where the distribution amount or the taxable amount is more than \$500 per month but less than \$6,000 for the year, no state income tax will be required to be withheld, if the person receiving the distribution is eligible for the partial exemption of retirement benefits.

Finally, there is no requirement for withholding from a lump-sum payment from a qualified retirement plan if the lump-sum payment is \$6,000 or less, the recipient is eligible for the partial exemption of distributions from pensions and other retirement plans, and the lump-sum payment is the only distribution from the retirement plan in the year.

ITEM 26. Amend subrule 48.7(2), introductory paragraph, as follows:

**48.7(2)** Deduct from the computed tax one personal exemption credit of \$20 (\$40 for tax years beginning on or after January 1, 1998) for each nonresident partner, shareholder, employee, or beneficiary included in the composite return.

ITEM 27. Amend paragraph **52.1(1)“d,”** introductory paragraph, as follows:

*d. Intangible property located or having a situs within Iowa.* Intangible property does not have a situs in the physical sense in any particular place. *Wheeling Steel Corporation v. Fox*, 298 U.S. 193, 80 L.Ed. 1143, 56 S.Ct. 773 (1936); *McNamara v. George Engine Company, Inc.*, 519 So.2d 217 (La. App. 1988). The term “intangible property located or having a situs within Iowa” means generally that the intangible property belongs to a corporation with its commercial domicile in Iowa or, regardless of where the corporation which owns the intangible property has its commercial domicile, the intangible property has become an integral part of some business activity occurring regularly in Iowa. *Beidler v. South Carolina Tax Commission*, 282 U.S. 1, 75 L.Ed. 131, 51 S.Ct. 54 (1930); *Geoffrey, Inc. v. South Carolina Tax Commission*, 437 S.E.2d 13 (S.C. 1993), cert. denied, 114 S.Ct. 550 (1993); *Kmart Properties, Inc. v. Taxation & Revenue Department of New Mexico*, 131 P. 3d 27 (N.M. Ct. App. 2001), rev’d on other issues, 131 P. 3d 22 (N.M. 2005); *Secretary, Department of Revenue v. Gap (Apparel), Inc.*, 886 So. 2d 459 (La.Ct.App. 2004); *A & F Trademark v. Tolson*, 605 S.E. 2d 187 (N.C.App. 2004), cert. denied 126 S.Ct. 353 (2005); *Lanco, Inc. v. Director, Division of Taxation*, 879 A.2d 1234 (N.J.Super.A.D. 2005), aff’d, 908 A.2d 176 (N.J. 2006) (per curiam), cert. denied 127 S.Ct. 2974 (June 18, 2007); *Geoffrey, Inc. v. Oklahoma Tax Commission*, 132 P. 3d 632 (Okla. Ct. Civ. App. 2005), cert. denied (Mar. 20, 2006), as corrected (Apr. 12, 2006); *FIA Card Services, Inc. v. Tax Comm’r*, 640 S.E.2d 226 (W. Va. 2006), cert. denied, 127 S.Ct. 2997 (June 18, 2007); *Capital One Bank v. Commissioner of Revenue*, 899 N.E.2d 76 (Mass. 2009); *Geoffrey, Inc. v. Commissioner of Revenue*, 899 N.E.2d 87 (Mass. 2009); *KFC Corporation v. Iowa Department of Revenue*, 792 N.W. 2d 308 (Iowa 2010), cert. denied 132 S. Ct. 97 (October 3, 2011). The following is a noninclusive list of types of intangible property: copyrights, patents, processes, trademarks, trade names, franchises, contracts, bank deposits including certificates of deposit, repurchase agreements, mortgage loans, consumer loans, business loans, shares of stocks, bonds, licenses, partnership interests including limited partnership interests, leaseholds, money, evidences of an interest in property, evidences of debts such as credit card debt, leases, an undivided interest in a loan, rights-of-way, and interests in trusts.

ITEM 28. Amend subrule 52.1(4), introductory paragraph, as follows:

**52.1(4)** *Taxation of corporations having only intangible property located or having a situs in Iowa.* For tax years beginning on or after January 1, 1995, corporations whose only connection with Iowa is their ownership of intangible property located or having a situs in Iowa are subject to Iowa income tax and must file an Iowa income tax return. Intangible property is located or has a situs in Iowa if the corporation’s commercial domicile is in Iowa and the intangible property has not become an integral part of some business activity occurring regularly within or without Iowa. Regardless whether the corporation’s commercial domicile is in or out of Iowa, intangible property is located or has a situs in Iowa if the intangible property has become an integral part of some business activity occurring regularly in Iowa. *Geoffrey, Inc. v. South Carolina Tax Commission*, 437 S.E.2d 13 (S.C. 1993), cert. denied, 114 S.Ct. 550 (1993); *Arizona Tractor Company v. Arizona State Tax Commission*, 115 Ariz. 602, 566 P.2d 1348 (Ariz. App. 1977); *KFC Corporation v. Iowa Department of Revenue*, 792 N.W. 2d 308 (Iowa 2010), cert. denied 132 S. Ct. 97 (October 3, 2011). In the event that the intangible property interest is a general or limited partnership interest, the location or situs of that partnership interest is the place(s) where the partnership conducts business. *Arizona Tractor Company v. Arizona State Tax Commission*, supra.

ITEM 29. Amend rule 701—52.12(422) as follows:

**701—52.12(422) Deduction of credits.** The credits against computed tax set forth in Iowa Code sections 422.33 and 422.110 shall be ~~deducted~~ claimed in the following sequence.

1. Franchise tax credit.

2. Disaster recovery housing project tax credit.
3. School tuition organization tax credit.
4. Venture capital tax credits (excluding redeemed Iowa fund of funds tax credit).
5. Endow Iowa tax credit.
6. Agricultural assets transfer tax credit.
7. ~~Film qualified expenditure tax credit.~~ Custom farming contract tax credit.
8. ~~Film investment tax credit.~~ Film qualified expenditure tax credit.
9. ~~Redevelopment tax credit.~~ Film investment tax credit.
10. ~~Investment tax credit.~~ Redevelopment tax credit.
11. ~~Wind energy production tax credit.~~ From farm to food donation tax credit.
12. ~~Renewable energy tax credit.~~ Investment tax credit.
13. ~~Redeemed Iowa fund of funds tax credit.~~ Wind energy production tax credit.
14. ~~New jobs tax credit.~~ Renewable energy tax credit.
15. ~~Economic development region revolving fund tax credit.~~ Redeemed Iowa fund of funds tax credit.
16. ~~Solar energy system tax credit.~~ New jobs tax credit.
17. ~~Charitable conservation contribution tax credit.~~ Economic development region revolving fund tax credit.
18. ~~Alternative minimum tax credit.~~ Solar energy system tax credit.
19. ~~Historic preservation and cultural and entertainment district tax credit.~~ Charitable conservation contribution tax credit.
20. ~~Corporate tax credit for certain sales tax paid by developer.~~ Alternative minimum tax credit.
21. ~~Ethanol-blended gasoline tax credit or ethanol promotion tax credit.~~ Historic preservation and cultural and entertainment district tax credit.
22. ~~Research activities tax credit.~~ Corporate tax credit for certain sales tax paid by developer.
23. ~~Assistive device tax credit.~~ Ethanol promotion tax credit.
24. ~~Motor fuel credit.~~ Research activities credit.
25. ~~Wage-benefits tax credit.~~ Assistive device tax credit.
26. ~~Refundable portion of investment tax credit, as provided in subrule 52.10(4).~~ Motor fuel tax credit.
27. ~~E-85 gasoline promotion tax credit.~~ Wage-benefits tax credit.
28. ~~Biodiesel blended fuel tax credit.~~ Refundable portion of investment tax credit, as provided in subrule 52.10(4).
29. ~~E-15 plus gasoline promotion tax credit.~~ E-85 gasoline promotion tax credit.
30. ~~Estimated tax and payment with vouchers.~~ Biodiesel blended fuel tax credit.
31. ~~E-15 plus gasoline promotion tax credit.~~
32. ~~Estimated tax and payment with vouchers.~~

This rule is intended to implement Iowa Code sections 422.33, 422.91 and 422.110.

ITEM 30. Amend subrule **52.44(2)**, second and third unnumbered paragraphs, as follows:

The federal energy tax credit for solar energy systems is currently allowed for installations that are ~~completed~~ placed in service on or before December 31, 2016. Therefore, the Iowa tax credit will be available for the 2012 to 2016 tax years for ~~installations completed~~ systems placed in service on or before December 31, 2016. The solar energy system must be ~~installed~~ placed in service on or after January 1, 2012, to qualify for the Iowa credit. If the taxpayer installed a solar energy system and initially reported the federal tax credit for a tax year beginning prior to January 1, 2012, no Iowa credit will be allowed.

EXAMPLE: A taxpayer reported a \$9,000 energy credit on the 2011 federal return due to an installation of a solar energy system that was ~~completed~~ placed in service in 2011. The taxpayer applied \$4,000 of the credit on the taxpayer's 2011 federal return since the federal tax liability was \$4,000. The remaining \$5,000 of federal credit was applied on the 2012 federal return. No credit will be allowed on the 2012 Iowa return since the installation was ~~completed~~ placed in service before January 1, 2012.

ITEM 31. Adopt the following **new** subrules 53.8(3) to 53.8(6):

**53.8(3)** *Charitable contributions relating to the charitable conservation contribution tax credit.* For tax years beginning on or after January 1, 2008, a taxpayer who claims a charitable conservation contribution tax credit in accordance with rule 701—52.37(422) cannot claim a deduction for charitable contributions under Section 170 of the Internal Revenue Code for the amount of the contribution for which the tax credit is claimed for Iowa tax purposes.

**53.8(4)** *Charitable contributions relating to school tuition organizations.* For tax years beginning on or after July 1, 2009, a taxpayer who claims a school tuition organization tax credit in accordance with rule 701—52.38(422) cannot claim a deduction for charitable contributions under Section 170 of the Internal Revenue Code for the amount of the contribution to the school tuition organization for which the tax credit is claimed for Iowa tax purposes.

**53.8(5)** *Charitable contributions relating to the endow Iowa tax credit.* For tax years beginning on or after January 1, 2010, a taxpayer who claims an endow Iowa tax credit in accordance with rule 701—52.23(15E,422) cannot claim a deduction for charitable contributions under Section 170 of the Internal Revenue Code for the amount of the contribution for which the tax credit is claimed for Iowa tax purposes.

**53.8(6)** *Charitable contributions related to the from farm to food donation tax credit.* For tax years beginning on or after January 1, 2014, a taxpayer who claims a from farm to food donation tax credit in accordance with rule 701—52.45(422,85GA,SF452) cannot claim a deduction for charitable contributions under Section 170 of the Internal Revenue Code for the amount of the contribution for which the tax credit is claimed for Iowa tax purposes.

ITEM 32. Amend rule **701—53.8(422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 422.35 ~~as amended by~~ and 1994 2013 Iowa Acts, Senate File ~~2245~~ 452.

ITEM 33. Amend subrule 58.5(4) as follows:

**58.5(4)** Alternative minimum tax credit for minimum tax paid in a prior tax year. Minimum tax paid in prior tax years commencing with tax years beginning on or after January 1, 1987, by a taxpayer can be claimed as a tax credit against the taxpayer's regular income tax liability in a subsequent tax year. Therefore, 1988 is the first tax year that the minimum tax credit is available for use and the credit is based on the minimum tax paid by the taxpayer for 1987. ~~However, only the portion of the minimum tax which is attributable to those adjustments and tax preferences which are "deferral items" qualifies for the minimum tax credit for tax years beginning prior to January 1, 1990. "Deferral items" are those tax preferences and adjustments which result in a temporary change in a taxpayer's tax liability. An example of a "deferral item" is the tax preference for accelerated depreciation of real property placed in service before 1987. On the other hand, the portion of the minimum tax which is attributable to the "exclusion item" for appreciated property charitable deduction does not qualify for the minimum tax credit. The appreciated property charitable deduction tax preference is the only state "exclusion item," although there are several "exclusion items" which are used to compute federal minimum tax. For tax years beginning on or after January 1, 1990, the entire amount of minimum tax paid qualifies for the minimum tax credit, and there is no longer any distinction between "deferral items" and "exclusion items."~~ The minimum tax credit may only be used against regular income tax for a tax year to the extent that the regular tax is greater than the tentative minimum tax for the tax year. If the minimum tax credit is not used up against the regular tax for a tax year, the remaining credit is carried to the following tax year to be applied against the regular income tax liability for that period.

a. *Computation of minimum tax credit on Form Schedule IA 8801C 8827F.* The minimum tax credit is computed on Form Schedule IA 8801C 8827F from information on Form Schedule IA 4626 4626F for the prior tax year years, Form IA 4120 1120F and Form Schedule IA 4626 4626F for the current year and from Form Schedule IA 8801C 8827F for the prior tax year years (applies in 1989 and in subsequent tax years).

Form IA 8801C is in three parts. In the first part, a calculation is made to determine the portion of the minimum tax paid in the prior year, if any, which is attributable to the exclusion item for appreciated

property charitable deduction. In the second portion of Form IA 8801C, the minimum tax attributable to the appreciated property charitable deduction from Part I is subtracted from the total minimum tax paid for the prior year. The remaining amount of minimum tax is attributable to the deferral tax preference items and adjustment items. This remaining amount, if any, is added to the minimum tax carryover credit from Form IA 8801C for the prior tax year, if any. This total is compared to the regular income tax liability less nonrefundable credits, less the tentative minimum tax for the current year and the lesser amount is the allowable minimum tax credit for the current year.

The final part of Form IA 8801C is used to compute the minimum tax credit, if any, which will be carried over to the next tax year. The carryover credit is computed by subtracting the allowable credit for the current tax year from the total of the minimum tax credit attributable to deferral items and the carryover credit from the prior tax years.

b. *Example. Examples of computation of the minimum tax credit and carryover of the credit.* The taxpayer had a 1989 taxable income of \$450,000 and an accelerated depreciation tax preference of \$280,000. In 1988 the taxpayer had taxable income of \$500,000 and tax preferences of \$370,000 which consisted of \$320,000 of accelerated property charitable deduction and \$50,000 of appreciated property charitable deduction. The minimum tax credit for 1989 was computed on Form IA 8801C using data from Form IA 4626F for 1988 and from Form IA 4626F for 1989 and Form IA 1120 for 1989.

#### Form IA 8801C

|  |  |          |
|--|--|----------|
| Part I. Computation of Minimum Tax on Exclusion Items  |  |          |
| Line 11  | - Gross tax on exclusion items   | -0-      |
| Line 12  | - Less regular tax minus credits   | \$33,900 |
| Line 13  | - Net minimum tax on exclusion items   | -0-      |
| Part II. Computation of Allowable Credit for 1989      |  |          |
| Line 14  | - Enter amount from line 18 IA 4626F for 1988                                | \$ 1,100 |
| Line 15  | - Enter amount from line 13 part I   | -0-      |
| Line 16  | - Subtract line 15 from line 14  | \$ 1,100 |
| Line 17  | - Enter credit carryforward from 1987  | -0-      |
| Line 18  | - Add lines 16 and 17  | \$ 1,100 |
| Line 19  | - Enter 1989 regular tax liability   | \$22,500 |
| Line 20  | - Enter 1989 tentative minimum tax   | \$21,600 |
| Line 21  | - Subtract line 20 from line 19  | \$ 900   |
| Line 22  | - Allowable minimum tax credit for 1989. Enter smaller of line 18 or line 21 | \$ 900   |
| Part III. Computation of Minimum Tax Credit Carryovers |  |          |
| Line 23  | - Enter amount from line 18 part II  | \$ 1,100 |
| Line 24  | - Enter amount from line 22 part II  | 900      |
| Line 25  | - Carryforward of minimum tax credit to 1990. Subtract line 24 from line 23  | \$ 200   |

EXAMPLE 1. Taxpayer reported \$5,000 of minimum tax for 2011. For 2012, taxpayer reported regular tax less credits of \$8,000, and the minimum tax liability is \$6,000. The minimum tax credit is \$2,000 for 2012 because, although the taxpayer had an \$8,000 regular tax liability, the credit is allowed only to the extent that the regular tax exceeds the minimum tax. Since only \$2,000 of the carryover credit from 2011 was used, there is a \$2,000 minimum tax carryover credit to 2013.

EXAMPLE 2. Taxpayer reported \$2,500 of minimum tax for 2011. For 2012, taxpayer reported regular tax less credits of \$8,000, and the minimum tax liability is \$5,000. The minimum tax credit is \$2,500 for 2012 because, although the regular tax less credits exceeded the minimum tax by \$3,000, the credit is allowed only to the extent of minimum tax paid for prior tax years. There is no minimum tax carryover credit to 2013.

c. *Minimum tax credit after merger.* When two or more financial institutions merge or consolidate into one financial organization, the minimum tax credit of the merged or consolidated operation is available for use by the survivor of the merger or consolidation.

ITEM 34. Adopt the following **new** rule 701—59.17(15E,422):

**701—59.17(15E,422) Charitable contributions relating to the endow Iowa tax credit.** For tax years beginning on or after January 1, 2010, a taxpayer who claims an endow Iowa tax credit in accordance with rule 701—58.13(15E,422) cannot claim a deduction for charitable contributions under Section 170 of the Internal Revenue Code for the amount of the contribution for which the tax credit is claimed for Iowa tax purposes.

This rule is intended to implement Iowa Code section 15E.305.